IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PETITION NO.3216 OF 2004

Shivaji Parboti Gardi. ...Petitioner.

Versus

The Assistant Registrar, appointed under
B. I. R. Act 1946 & Ors. ...Respondents.

.....

Mr. S.N. Deshpande for the Petitioner.
Mr. R.M. Govt. Pleader for Respondent No.1.
Mr. M.S. Naik for Respondent No.2.
Ms. B.B. Dholakia for Respondent No.3.

.....

CORAM :DALVEER BHANDARI, C.J. &
DR. D.Y. CHANDRACHUD, J.
December 16, 2004.

P.C.:

The petitioner has, in these proceedings under Article 226 of the Constitution, sought the issuance of a writ of Certiorari for quashing and setting aside the order of the Assistant Registrar under Section 44 of the Bombay Industrial Relations Act, 1946, registering an agreement that has been entered into on 6th July 2004 between the Second Respondent and the Third Respondent in relation to the Canteen Mechanic Auto Department.

A notice of change was issued by the Second Respondent on 28th June 2004 in the matter of restructuring and reorganising its textile activities so as to render its functioning viable and competitive. The Third Respondent is a recognised and representative Union under the provisions of the Bombay Industrial Relations Act, 1946. The Union and the Second Respondent entered into an agreement on 6th July 2004. The agreement was thereupon forwarded to the First Respondent for its approval. Objections were raised before the First Respondent on 21st June 2004 and on 13th July 2004. The Assistant Registrar of Labour has stated that in view of those objections and with a view to making an enquiry, the representatives of the management, the Third Respondent Union and the complainant workers were summoned for discussion on 19th August 2004. The Third Respondent informed the Assistant Registrar that before signing an agreement, the Union had consulted the members of the local committee, employees working in different departments and that the agreement was signed in the larger interest of the workers and the Company as a whole. The First Respondent in his affidavit has stated that he had satisfied himself by considering all the relevant material

including the text of the agreement, that the agreement was not contrary to law and that the interest of the workers had been adequately protected. The preamble to the agreement inter alia contained the following recital :

> "The Century Textiles & Industries Limited, a Company incorporated under the Companies Act (hereinafter referred to as the Co.) is engaged in the manufacture of 100% cotton fabrics and yarn. The Company has been facing difficult market conditions on account of high cost of production, high electricity, diesel and other fuel charges as well as dyes and chemicals prices, stiff competition both in domestic and export markets, etc.
>
> The Management of the Company, on a review of the prevalent conditions mentioned above and other relevant factors have decided to discontinue uneconomic activities by restructuring and reorganizing its textile activities in phases, if necessary, with a view to achieving cost effectiveness, better control, supervision and coordination for ensuring compact and economic working, etc. so that the textile activities become viable and competitive."

Clause 3 of the agreement contemplates the discontinuance of 132 Cimmco Auto Looms. Clause 5 of the agreement thereupon provides thus:

> "5. (i) That employees becoming surplus on account of dismantling and removal of Cimmco auto looms and other machines as mentioned in Clause 1 above, read with Annexure "A", who are already absorbed in other departments will be offered Voluntary Retirement Scheme (VRS), the details of which are given in Annexure "B" to this Agreement which they may opt for in accordance with the said VRS.
>
> (ii) That employees becoming surplus on account of discontinuance of working of 132 Cimmco auto looms mentioned in Clause 3 above and some machines in other departments/sections mentioned in Clause 4 above will also be offered Voluntary Retirement Scheme (VRS), the details of which are given in Annexure "B" to this Agreement which they may opt for in accordance with the said VRS."

In clause 6 of the agreement, it has been specifically provided that workers, who do not opt for voluntary retirement, will be absorbed in other departments or Sections without affecting their wages and that they would be given job training. Clause 6 is in the following terms:

> "6. That such of the surplus employees referred to in Clause 5 above, who do not desire to opt for the benefits of the VRS will be absorbed in other departments/sections, without adversely affecting their wages, and will be given on the job training, if necessary, to enable them to work in those concerned departments/sections. In their places, if employees from any other departments/sections desire to

> opt for benefits of the VRS, their applications for voluntary retirement in accordance with the provisions of the said VRS shall be considered by the Company."

The Assistant Registrar has stated that about 52 employees have already taken VRS. He has stated that he was of the view that the interest of the workers was duly protected by the aforesaid terms of the agreement. In the affidavit in reply which has been filed on behalf of the Second Respondent, it has been stated that till 27th October 2004, 109 employees have opted for VRS whose dues including VRS compensation as provided under the agreement have been paid. It has been urged that the petition has been filed by only 96 of the 7500 employees engaged by the Second Respondent and that it is not open to this group of employees to obstruct the implementation of the agreement which has been arrived at with the recognised Union.

We have heard Learned Counsel appearing for the parties. Clause 6 of the agreement specifically contains an assurance on the part of the Second Respondent that those employees who do not opt for voluntary retirement will be absorbed in the other Departments or

Sections; that the wages of these employees shall not be affected and that they will be given on the job training, if necessary, so as to enable them to work in the Departments or Sections where they are redeployed. The same assurance has been specifically incorporated in the affidavit in reply of the Second Respondent and is being urged before this Court. We record that assurance and make it a part of the order of this Court. In that view of the matter, we do not find any reason to hold that the agreement was fraudulent or that the decision of the First Respondent to register the agreement requires any interference. We do not find any merit in the petition which is accordingly rejected.

CHIEF JUSITCE

DR.D. Y. CHANDRACHUD, J.